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**FILED**

**JAN 13 2010**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

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**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

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UTAH CHAPTER OF THE SIERRA CLUB,  
SOUTHERN UTAH WILDERNESS  
ALLIANCE, NATURAL RESOURCES  
DEFENSE COUNCIL, and NATIONAL  
PARKS CONSERVATION ASSOCIATION,

Petitioners,

DIVISION OF OIL, GAS AND MINING,

Respondent,

ALTON COAL DEVELOPMENT, LLC

Intervenors,

**DIVISION'S MOTION  
TO DISMISS CERTAIN CLAIMS**

Docket No. 2009-019  
Cause No. C/025/0005

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The Division of Oil, Gas, and Mining (Division), by and through counsel hereby submits the following Motion to Dismiss Certain Claims included in Petitioners' Request for Agency Action for failure to state a claim upon which relief may be granted. That is, even admitting the factual allegations contained in the Request related to the certain claims as true, there exists no legal right to relief.

The Division specifically requests the following claims be dismissed for failure to state a valid legal claim upon which relief may be granted:

1. The alleged deficiency in the permit application that the Division failed to consider the effect of coal haul trucks on cultural and other resources outside of the permit area including the impacts of coal haul trucks on the Panguitch National Historic District (PNHD) as set out in itemized deficiency 24 and 25 (page 13) and in the itemized Argument and Request for Relief, 7 (page 24 to 26);

2. The alleged deficiency in the permit application for failure to require an air monitoring that is sufficient to address the effectiveness of the proposed fugitive dust controls and failure to address the effects of mining on the visibility of night sky in violations of R645-301-423.200 as set out in itemized deficiencies numbers 26 and 27, (page 14 ) and itemized Argument and Request for Relief 8 (pages 26 and 27); and

3. The alleged deficiencies in the permit application of failing to document the approval of the Division of Wildlife Resources and to include measures to monitor to limit road kill for the protection of Sage Grouse and other wildlife as alleged in itemized deficiencies numbers 28 and 29 and in itemized Argument and Request for Relief, D (pages 34 and 35).

The Division asks that the Board rule as a matter of law that the allegations are not supported by law or fact as set forth in the Request for Agency Action and that the claims be dismissed and that the petitioners be precluded for presenting evidence pertaining to each of the above alleged deficiencies and requests for relief.

Respectfully submitted this 12<sup>th</sup> day of January, 2010



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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing DIVISION'S MOTION TO DISMISS CERTAIN CLAIMS for Docket No. 2009-019, Cause No. C0250005 to be mailed with postage prepaid, this 14th day of January, 2010, to the following:

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**[Via Email]**

A handwritten signature in cursive script, reading "Julie Ann Carter", written over a horizontal line.